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Utah Supreme Court

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In the Supreme Court of the State of Utah

FILED
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Clerk, Supreme Court, Utah

ARTHUR R. JOHNSON and EVA JOHNSON, his wife,

Plaintiffs and Appellants,

vs.

PEOPLES FINANCE & THRIFT COMPANY, a corporation, et al

Defendants and Respondents.

Case No. 8024

BRIEF OF RESPONDENTS

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In the Supreme Court
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BRIEF OF RESPONDENTS

STATEMENTS OF FACTS

The respondents agree with the statement of facts set out in appellants' brief with the additional fact that a second stipulation was entered into between the parties on February 16, 1953, (R. 71-74), and the further fact that at the time of the entering into the stipulation of May 23, 1952, and Feb. 16, 1953, all the parties, including the plaintiffs, were present in court with their attorneys and said parties were consulted relative to the terms of said stipulation by their attorneys

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prior to the entry of the same, and they acquiesced in and agreed to the terms of said stipulations prior to the entry of said stipulations.

STATEMENT OF POINTS

The respondents will argue appellants' points in the order in which they appear in appellants' brief.

ARGUMENT

POINT I. THE JUDGMENT IS NOT VOID BECAUSE OF FAILURE OF THE TRIAL COURT TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Appellant contends that Rule 52 (a) of the Utah Rules of Civil Procedure make findings of fact and conclusions of law by the court mandatory before entry of any valid judgment. Respondent contends that the scope of Rule 52 (a) does not include the type of judgment at issue, and that if it did, the judgment is not ipso facto void, but is a valid and enforceable obligation.

The scope of Rule 52 (a) is clearly defined in the first sentence of the same.

Rule 52—Findings by the Court.

> "(a) Effect. *In all actions tried upon the facts* without a jury or with an advisory jury, the courts shall, unless the same are waived, find the facts specially and state separately its conclusions of law thereon and direct

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the entry of the appropriate judgment, * * * (Emphasis added).

The express wording of the rule includes only those actions "tried upon the facts." The reason for thus restricting the application of the rule becomes apparent when the purpose of the rule is analyzed. However, suffice it to say that a judgment entered pursuant to a stipulation of the parties is not the product of an action "tried upon the facts." Instead, a consent judgment (one entered for the purpose of executing a settlement or compromise of an action) is a contract of the parties acknowledged in open court and ordered to be recorded. It is not a judicial determination or a judgment of the court except in the sense that the court allows it to go upon the record and have the force and effect of a judgment. The only inquiry of the court is whether the parties have in fact agreed as to the terms of the judgment.

(See: 49 C.J.S. 308 (1947))
31 Am. Jur. 105, 107 (1940))
3 Freeman, Judgments § 1350 (1925))

It is thus apparent that the scope of Rule 52 (a) does not include the consent judgment, as in such a case there has been no judicial inquiry into the facts of the controversy. The parties in the instant case stipulated to the terms of a compromise, but there was no agreed statement of facts. It is difficult to see how the court could find the facts even if it had attempted to, without a trial upon the merits. Since a determination of the facts of the controversy and conclusions of law drawn from such facts was not the basis of the judgment, any findings of fact in the same matter would not only be unnecessary, but objectionable.

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This argument is more convincing in the light of the purpose of the adoption of Rule 52 (a). A leading commentary upon the Federal Rules of Civil Procedure, from which the Utah rules were adapted, says in regard to the federal rule: (Barron & Holtzoff 2 Federal Practice and Procedure, Rules Edition, 809)

> The purpose of Rule 52 (a) is to aid the appellate court by affording it a clear understanding of the ground or basis of the decision of the trial court.

Interpreting this rule, the court, in United States v. Institute of Carpet Manufacturers of America, (1 F.R.D. 636 (Dist. Ct. S. D.) stated:

> The apparent reason for the adoption of the rule in question was so that an appellate court might be informed on the grounds for the decision rendered by the court from which the appeal was taken. The rule is intended to aid the appellate court by affording a clear understanding of the basis of the decision of the trial court. (Citing cases).

and citing Goodacre v. Panagopoulos, (72 App. D. C. 25, 110 F. 2d 377, 382)

> Like its predecessor, Equity Rule 70½, Rule 52 (a) is intended to aid appellate courts by affording them a clear understanding of the basis of the decision below. We have held that, when this clear understanding is afforded, the judgment may stand although the rule is violated.

This statement by one of our Federal District Courts is even more significant when one realizes that there is not even a provision for waiver of findings and conclusions in the federal rules, as there is in the Utah rules.

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Our Supreme Court, speaking through Justice Wade in Mower v. McCarthy, (245 P. 2d 224), casts some light upon the purpose of the rule at issue: (Pgs. 226, 227)

> In every case involving disputed issues of fact, findings of such facts are helpful to the reviewing court and should be made when requested and findings which meet the approval of the trier of facts are purposed.

The judgment in the instant case was entered pursuant to stipulation of the parties, and the judgment itself so indicates (R. 53). There was no trial upon the facts by the trial court. There was no finding of fact which was made by the trial court, or which could have been made in light of the stipulation. It is clear that the basis of the decision of the trial court was the stipulation, and findings of fact would serve no purpose at all in clarifying for an appellate court the basis of the decision. Findings have weight with the appellate court when they represent the trial court's appraisal of the candor and credibility of witnesses and are based upon oral testimony. In this case, even if there had been such testimony, it could not have been relevant because the parties stipulated to a settlement. The judgment was entered only after two appearancs of the parties in open court, and a mutual agreement as to the terms of settlement of the dispute. There were no witnesses called, no documentary evidence presented for the court to pass upon, and no testimony whatsoever to be appraised by the trier of facts.

It is elementary that when a judgment is based upon an agreement of the parties there are no material issues to be

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decided by the trial court. Further, even in contested matters tried upon the facts, the failure to make findings upon immaterial issues, or issues which would not affect the judgment of the court is not ground for reversal. (Sheppick v. Sheppick et al., 44 Utah 131, 138 P. 1169).

Appellant cites two Utah cases to support his argument that the judgment is without validity because of the absence of findings of fact and conclusions of law. The first of these, Thomas v. Farrell, 82 Utah 532, 26 P. 2d 328 (1933)) was tried on the facts wilthout a jury. The court in holding that it was error for the trial court to fail to make findings on a matter at issue affirmed the familiar rule that "findings must respond to, and cover, the matter at issue raised by the pleadings." Justice Folland did not say that in a case where there are no material issues for the court to decide because of a stipulation of the parties, the judgment will be void without written findings of fact. The second case cited by appellant is likewise distinguishable in that it was an appeal from a decision after a trial including the presentation of evidence and testimony.

Our Supreme Court has recognized that findings of fact and conclusions of law are not an essential to every valid judgment. In Young v. Ellett, (146 P. 2d 196) the court said (at page 198):

> "There are final judgments where no findings of fact or conclusions of law need or can be made . . . There are others in which the record is complete and no findings could be made other than those found in the record."

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In the same opinoin, Mr. Chief Justice Wolfe said (Concurring at Page 199):

> "If a judgment is not supported by findings and conclusions, it would seem that it should nevertheless be good as against collateral attack and capable of enforcement despite what was said in Hillyard v. District Court, 68 Utah 220, 249 P. 806. It would seem that a judgment would be void only where there was no power to render it."

Again, in Wright v. Union Pacific RR Co., (22 Utah 338, 62 P. 372) the Court indicated that findings of fact are required only in a trial on the merits. Baird v. Upper Canal Irrigation Company (75 Utah 57, 257 P. 1060) limits the requirements of findings to "contested cases."

The Federal District Court for the Southern District was confronted with substantially the same problem in United States v. Institute of Carpet Manufacturers of America, supra, as is now before this court. The parties to the suit had stipulated to a settlement of their dispute. The case came before the court on an application for the entry of a decree on the stipulation. In granting the application, the court pointed out that findings of fact and conclusions of law by the court were not essential pre-requisites to the entry of a valid judgment.

> A "Trial" is a judicial examination of the issues. (42 Words and Phrases, Permanent Edition, 482, 533).

In Prudential Insurance Company of America v. Goldstein, (43 F. Supp. 767 (1942) the court said with regard to Rule 52 of the Federal Rules (Pg. 768):

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> "This rule provides that findings be made by the court in all actions "tried" upon the facts without a jury. While summary judgment may dispose of all the issues in the action, the proceedings upon which it is based cannot be regarded as a trial, nor are the issues "tried"."

Again, in Pen-Ken Oil & Gas Corporation v. Warfield Natural Gas Co., 2 F.R.D. 355 (1942) the court stated (Pg. 355):

> "In my opinion Rule 52 applies to a case upon final hearing and submission. The ruling here is not made on the case upon final submission on the law and facts. The ruling here is on defendant's motion for summary judgment."

This court is not hampered in its ability to appraise the judgment of the trial court by absence of findings of fact and conclusions of law. The basis of the judgment is clear. This appeal is not taken from the trial court's decision of the facts. This court would be in no manner aided in making a decision on this appeal by findings and conclusions. No right of the appellant had been infringed as a result of the trial court's failure to find specifically the facts on each issue that might have been raised had the case gone to trial. Further, applications of the rule of negative implication, a common principle of statutory construction, excludes the possibility that Rule 52 (a) is designed to require findings and conclusions in cases which are not tried upon the facts.

Since there is no necessity for findings and conclusions, in the instant case, it is immaterial whether there was a waiver of the same as provided for in Rule 52 (a).

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POINT II. THE JUDGMENT IS NOT VOID BECAUSE THE JUDGMENT WAS ENTERED UPON STIPULATION AND THERE WAS NO NECESSITY FOR A PRE TRIAL ORDER, AND SAID JUDGMENT IS IN ACCORDANCE WITH SAID STIPULATION.

The purpose of the rule directing the trial court to enter a pre-trial order is apparent. A trial court may eliminate unnecessary issues, analyze and settle the pleadings by amendments, eliminate matters of proof by admissions and stipulations, etc. The pre trial order is to designate the results of the conference and direct the subsequent conduct of the trial. Appellant properly states the purpose of the order as being a guide to the parties.

However, it cannot be honestly argued that the court is without power to enter a judgment at the close of a pre trial conference. (This point is too well established to require citation of cases). In this event then, what is left to be the subject of a further order? The judgment in the instant case certainly did not leave the parties in a position to argue over the meaning of the stipulation. The terms of the judgment are clear and understandable. The court directed each party to respond in the manner that they had agreed to in their stipulations. Whether the decree of the court is called a judgment or a pre trial order or a brown horse is not significant It is enough to say that it included all of the results of the pre trial conference, and directed the settlement of the controversy.

It is difficult to see the point of appellants' argument that the stipulation was never meant to be the basis of a pre trial

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order or of a judgment. The appellate court might well ask why the parties went to the trouble of making a stipulation in open court if it were not their intent to make a final settlement of the dispute and have it a matter of judicial record with the force and effect of a judgment. It would have been a simple matter for all of the parties to the action to make a settlement out of court if they had never intended that their agreement be given the status of a court order.

Appellant's argument that it was the intention of all of the parties and the court that the only action by the court would be the granting of the "petition to dismiss" the action comes as a surprise to the other parties. This argument, which is raised for the first time on appeal, has little weight in light of the chain of events preceding the final judgment.

The Johnsons point out the language of the court (R. 46) as an indication that the stipulation was never intended to become part of an order of the court. It is a matter of record that the judgment was entered only after a second hearing of the parties (R. 71-74) on the objections to the proposed judgment, *and a further stipulation* which at the time settled all differences of the parties. Appellants later moved to set aside this stipulation, not on the grounds that the stipulation was ambiguous or indefinite, but that it was entered into improvidently, inadvertently and mistakenly. Only after *two* hearings, and *two* stipulations did the court sign the judgment embodying the terms of the agreement. There was certainly no question in the mind of the court as to the intent of the parties.

Appellants next argue that the judgment entered does

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not conform with the stipulation. The only fact argued in appellant's brief to support this point is that Paragraph 2 (R. 54) of the judgment provides for a conveyance by plaintiffs of part of their land by Warranty Deed and a contract of sale for the balance. Appellant then states that where the court can find this in the stipulation is beyond comprehension. An examination of the judgment shows that plaintiff is to convey by Warranty Deed to defendant Finlayson certain described land. Paragraph 1 of the judgment (R. 53) provides that the balance is to be the subject of a uniform real estate contract with plaintiff as seller and defendant Finlayson as buyer. One need only read the stipulation to comprehend that the following was part of the stipulation (R. 44, 45):

> MR. BACKMAN: The Plaintiffs Arthur Johnson and Eva Johnson, his wife, allow Ebba E. Finlayson a claim of One Thousand Dollars on the uniform real estate contract *and will convey to Ebba Finlayson the property west of the Fassie tract*—isn't that it?
>
> MR. BAYLE: Yes, straight west.
>
> MR. BACKMAN: . . . running the full depth of the property, *and a new contract will then be entered into with Ebba Finlayson* describing the balance of the property within the fence lines.

The property described in paragraph 2 (R. 54) of the judgment is the property west of the Fassie tract. Paragraph 1 (R. 53) of the judgment describes the balance of the Johnsons' property which was to be the subject of a real estate contract as provided for in the stipulation. It is unfair to the trial court to state that it is beyond comprehension where he could find this part of the judgment in the stipulation.

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POINT III. THE COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFFS' MOTION TO VACATE THE STIPULATION ENTERED INTO AT THE PRE TRIAL HEARING ON MAY 23, 1952, AND IN FAILING TO SET THE ACTION DOWN FOR TRIAL.

The plaintiff contends that the court abused its discretion in failing to vacate the stipulation entered into May 23, 1952. The only evidence to support such a contention is a self-serving affidavit signed on March 4, 1953 (R. 51-52). The court will note that the plaintiff delayed making such a contention for a period of more than nine months after the stipulation was entered into. Upon notice of objection to the entry of judgment, a second stipulation was entered into between the parties on February 16, 1953 (R. 71-74) and plaintiff raises no objection to this stipulation.

The affidavit raises six (6) objections:

(1) That the description of the land should conform to the description as determined by George W. Cassidy. There is nothing in the plaintiffs' pleading to indicate that such was to be the method of determining the description (R. 54). There is also no evidence presented by the plaintiff to show that the descriptions of the land do not conform to the survey made by George W. Cassidy.

(2) That the new contract would call for the same terms of payment as the old contract. The new contract does recite the same terms of payment as the old contract (R. 19 showing copy of old contract, and R. 54 showing payments under the judgment).

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(3) That plaintiffs 'attorney was not informed that plaintiffs were not in the chain of title as grantors of the property now in possession of Reid and Kartchner. The original action is to quiet title to the property described in plaintiffs' complaint (R. 8-9) which included the tract of land now in possession of Reid and Kartchner. In determining that plaintiff had an interest in said property, plaintiffs' attorney would of necessity have to determine that his client either was in the chain of title or had a paramount title because of adverse possession, purchase at tax sale, or for some use or title paramount to that of the defendants. Plaintiffs' attorney, at the time of commencement of the action, was also a licensed abstractor and certainly knew all of the facts pertaining to the titles of all the tracts of land involved.

(4) That the land held by Reid and Kartchner had not been held adversely against the plaintiffs. The defendants had no opportunity to prove their claims as the case was settled by stipulation of the attorneys for the various parties in court at which time all parties were present.

(5) That the amount to be received from Reid and Kartchner was disproportionate to the amount plaintiffs allowed Finlayson. The determination of amounts was on an entirely different basis. The amount Kartchner and Reid were to pay was to reimburse plaintiff for taxes he had inadvertently paid on property owned by Reid and Kartchner. The amount of credit to Finlayson was for a shortage of land to which he was entitled under the terms of his contract and had no relation whatsoever to the amounts fixed for reimbursement by Reid and Kartchner.

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(6) That plaintiff did not understand they were to convey any property to Finlayson. This part of the stipulation of May 23, 1952, was dictated by plaintiffs' attorney (R. 44-45), said stipulation being made at a time when the plaintiffs were personally present in court and they were personally consulted prior to the making of said stipulation by their attorney.

The stipulation was certain, unambiguous and fully concurred in after due deliberation by the attorneys for all the parties and its terms were never changed by further stipulations, said second stipulation being an additional term for settlement of the issues between the parties. Said stipulation was in all respects fairly and fully made and agreed upon by all the parties to said action and should not be avoided by this court.

Appellants have cited 50 American Jurisprudence, 614 Paragraph 14, with respect to the granting of relief from stipulation. The citation, among other things, recited: "That upon appeal, the determination of the trial court as to the propriety of granting such relief will not ordinarily be interfered with except where a manifest abuse of discretion is disclosed . . . Parties will not be relieved from stipulations in absence of a clear showing that the fact or facts stipulated are untrue, and then only when the application for such relief is seasonably made and good cause is shown for the granting of such relief."

The Utah Supreme Court, in the recent case of Warren vs. Dixon Ranch Company, 260 P.2d 741, recited the rule that the court on appeal will reverse the trial court only where an abuse of its discretionary power is clearly shown. The appellant has not shown nor has he attempted to show, that any

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of the facts contained in the stipulation were untrue, nor has he shown any facts indicating that the lower court was guilty of a manifest abuse of discretion.

CONCLUSION

Respondents contend that the judgment was entered into upon the full knowledge of all of the parties and their attorneys and after two lengthy discussions with the court, that all parties knew all of the facts contained therein and agreed to the stipulations prior to the time they were entered into.

For the reasons herein stated, the judgment of the lower court should be affirmed.

Respectfully submitted,

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